

SUPREME COURT OF ARKANSAS

Esry v. State

2014 Ark. 539 (2014) · No. CR-14-31 · Decided December 18, 2014

SUMMARY

The Arkansas Supreme Court affirmed the denial of Matthew Esry’s petition to correct an illegal sentence. The court held that his 96-month sentence for second-degree battery did not exceed the statutory maximum because it was enhanced based on habitual-offender status, and that the failure to reflect the enhancement in the judgment-and-commitment order was a correctable clerical error. The case was remanded with instructions to enter a corrected order.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	December 18, 2014
DOCKET	CR-14-31
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the denial of appellant's third petition to correct an illegal sentence under Arkansas Code Annotated section 16-90-111.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Matthew Esry v. State of Arkansas

TOPICS

- post-conviction relief
- sentencing
- criminal procedure
- appellate procedure
- sentence modification

PRACTICE AREAS

- Criminal procedure
- Post-conviction relief
- Sentencing
- Appellate procedure
- Judgment correction

QUESTIONS PRESENTED

1. Whether a ninety-six-month sentence for second-degree battery was illegal because the judgment-and-commitment order did not indicate that the sentence was enhanced under the habitual-offender statute.

2. Whether the circuit court had authority to address the petition despite the procedural history and prior petitions.
3. Whether the appellant could raise for the first time on appeal that the plea agreement was void because it was not signed by the prosecuting attorney.

HOLDINGS

1. The ninety-six-month sentence was not illegal because it did not exceed the statutory maximum applicable to Esry's offense when enhanced under the habitual-offender statute.
2. The circuit court must enter a corrected judgment-and-commitment order reflecting that Esry was sentenced as a habitual offender.
3. The court would not consider the argument that the plea agreement was void because it was not signed by the prosecuting attorney because the argument was raised for the first time on appeal.

KEY QUOTATIONS

“The failure to appropriately indicate on the judgment-and-commitment order that appellant was sentenced as a habitual offender is clearly clerical error that does not result in an illegal sentence.” (4)

“Accordingly, we affirm the denial of the petition on the basis that the sentence of 96 months’ imprisonment imposed on appellant is not an illegal sentence. However, we remand with instructions for the trial court to enter a corrected judgment-and-commitment order reflecting that appellant was sentenced as a habitual offender.” (5)

FACTUAL BACKGROUND

Matthew Esry pleaded guilty to second-degree battery in March 2011. At the plea hearing, he was advised that the offense carried a penalty of up to six years but that his sentence would be enhanced under the habitual-offender statute based on two prior felony convictions; he agreed to an eight-year sentence, and the trial court imposed it as a habitual-offender sentence. The resulting judgment-and-commitment order stated only that he received ninety-six months for second-degree battery and failed to mark that habitual-offender status applied.

PROCEDURAL HISTORY

Esry pleaded guilty to second-degree battery and received a ninety-six-month sentence after being advised that the sentence was enhanced based on his habitual-offender status. The judgment-and-commitment order did not indicate habitual-offender sentencing. Esry filed successive petitions challenging the sentence as outside the statutory range; the circuit court denied the latest petition, and Esry appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court was instructed to enter a corrected judgment-and-commitment order reflecting that Esry was sentenced as a habitual offender.

CASES CITED

- Thornton v. State, 2014 Ark. 113 (per curiam)
- State v. Colvin, 2013 Ark. 203, 427 S.W.3d 635
- Glaze v. State, 2011 Ark. 464, 385 S.W.3d 203
- Maldonado v. State, 2009 Ark. 432
- Lovelace v. State, 301 Ark. 519, 785 S.W.2d 212 (1990)
- Fritts v. State, 298 Ark. 533, 768 S.W.2d 541 (1989)
- Grissom v. State, 2013 Ark. 417 (per curiam)
- McClanton v. State, 2014 Ark. 439, ____ S.W.3d ____ (per curiam)
- Atkins v. State, 2014 Ark. 393, 441 S.W.3d 19 (per curiam)
- Reeves v. State, 339 Ark. 304, 5 S.W.3d 41 (1999)
- Gilliland v. State, 2014 Ark. 243 (per curiam)
- Hodges v. State, Hodges v. State, 2013 Ark. 299 (per curiam)
- Grissom v. State, 2009 Ark. 557 (per curiam)
- Rayford v. Hobbs, 2014 Ark. 244 (per curiam)
- Misenheimer v. Hobbs, 2012 Ark. 343 (per curiam)
- Smith v. State, 2011 Ark. 333 (per curiam)
- Burgie v. Norris, 2010 Ark. 267 (per curiam)
- Watkins v. State, 2014 Ark. 283, 437 S.W.3d 685 (2014) (per curiam)

OPINION

PER CURIAM.

Cite as 2014 Ark. 539 SUPREME COURT OF ARKANSAS No. CR-14-31 MATTHEW ESRY Opinion Delivered December 18, 2014 APPELLANT PRO SE APPEAL FROM THE HOT V. SPRING COUNTY CIRCUIT COURT [NO. 30CR-11-16] STATE OF ARKANSAS HONORABLE CHRIS E WILLIAMS, APPELLEE JUDGE AFFIRMED AND REMANDED WITH INSTRUCTIONS PER CURIAM On March 30, 2011, judgment was entered reflecting that appellant Matthew Esry had entered a plea of guilty to second-degree battery for which a sentence of 96 months' imprisonment was imposed.

While appellant was informed at the plea hearing that the sentence would be enhanced based on his habitual-offender status, the judgment-and-commitment order does not reflect that he was sentenced as a habitual offender. Appellant was charged by information alleging that he committed second-degree battery and asserting that he was a habitual offender based on prior convictions of criminal mischief and rape.

The record reflects that, at the plea hearing on March 22, 2011, appellant was informed that he had been charged with second-degree battery as a habitual offender. He stated that he understood that the punishment range for second-degree battery is zero to six years, that the punishment would be enhanced by habitual-offender status based on two prior felony convictions, and that he was pleading to a sentence of eight years based on that enhancement.

Cite as 2014 Ark. 539 Thereafter, the trial court sentenced him at the hearing as a habitual offender to eight years' imprisonment. Appellant also signed a plea agreement filed on March 23, 2011, indicating the imposition of a sentence of eight years based on a guilty plea to second-degree battery and habitual-offender status. While the judgment-and-commitment order entered on March 30, 2011, reflects that appellant was sentenced to serve 96 months' imprisonment for second-degree battery, the order was not appropriately marked to indicate that appellant was sentenced as a habitual offender.

In December 2011, appellant filed a petition to correct an illegal sentence, alleging that the sentence imposed was outside the statutory range for second-degree battery. Following a hearing on June 26, 2012, the trial court denied and dismissed the petition based on its finding that, because the petition was untimely, it no longer had jurisdiction over the matter.

The trial court found, however, that the eight-year sentence did exceed the presumptive sentence for second-degree battery. In October 2012, appellant again filed a petition to correct an illegal sentence, repeating the allegation that the imposed sentence was outside the statutory range and raising the additional allegation that he had notified his attorney of this error within ninety days after his sentence was imposed.

In an order entered on February 5, 2013, the trial court "closed the case" and found it would not address the argument raised in the petition based on the doctrine of res judicata. On August 16, 2013, appellant filed another petition to correct an illegal sentence, contending as he had previously that his sentence was outside the statutory range for second- 2 Cite as 2014 Ark.

539 degree battery. He alleged that, because the sentence was outside the range, it was illegal on its face. The trial court denied the petition, and appellant has lodged an appeal from that order in this court. On appeal, appellant argues that, because the judgment-and-commitment order reflects a sentence of 96 months' imprisonment based on the conviction of second-degree battery and was not marked to indicate that he was sentenced as a habitual offender, his sentence is illegal based on the available sentencing range for second-degree battery.¹ He further argues for the first time on appeal that his plea agreement is void because it was not signed by the prosecuting attorney.

We will not consider new arguments raised for the first time on appeal or consider factual substantiation added to bolster the allegations made below. *Thornton v. State*, 2014 Ark. 113 (per curiam). Second-degree battery is a Class D felony, which is punishable by a sentence that shall

not exceed six years. Ark. Code Ann. § 5-13-202(b) (Supp. 2011); Ark. Code Ann. § 5-4- 401(a)(5) (Supp.

2011). Arkansas Code Annotated section 5-4-501(a)(2)(E) (Supp. 2011) provides that a habitual offender with more than one but fewer than four prior felonies, who is convicted of a Class D felony, shall be sentenced to a term of imprisonment of not more than twelve years. Sentencing in Arkansas is entirely a matter of statute. *State v. Colvin*, 2013 Ark. 203, 427 1 At the June 26, 2012 hearing, the trial court seemed to indicate that, because the sentence exceeded the presumptive sentence for second-degree battery, appellant would only be required to serve the presumptive sentence, plus 120 days.

Apparently based on this finding by the trial court, appellant argues for the first time on appeal that he should be resentenced to 120 days. Because we do not find that the imposed sentence is excessive, it is not necessary to address this argument. 3 Cite as 2014 Ark. 539 S.W.3d 635; *Glaze v. State*, 2011 Ark. 464, 385 S.W.3d 203. No sentence shall be imposed other than as prescribed by statute.

Maldonado v. State, 2009 Ark. 432. A void or illegal sentence is one that is illegal on its face. *Lovelace v. State*, 301 Ark. 519, 785 S.W.2d 212 (1990); *Fritts v. State*, 298 Ark. 533, 768 S.W.2d 541 (1989). A sentence is illegal on its face when it exceeds the statutory maximum for the offense for which the defendant was convicted. *Lovelace*, 301 Ark. 519, 785 S.W.2d 212; *Fritts*, 298 Ark.

533, 768 S.W.2d 541. If a sentence is within the limits set by statute, it is legal. *Grissom v. State*, 2013 Ark. 417 (per curiam). A claim that a sentence is illegal presents an issue of subject-matter jurisdiction that can be addressed at any time under section 16-90-111(a) (Supp. 2011). *McClanton v. State*, 2014 Ark. 439, ___ S.W.3d ___ (per curiam); *Atkins v. State*, 2014 Ark.

393, 441 S.W.3d 19 (per curiam). While it is true that this statute was declared superseded by the time limitations in Arkansas Rule of Criminal Procedure 37.2(c), that portion of section 16-90-111 that provides a means to challenge a sentence on the ground that the sentence is illegal on its face remains in effect. See *Reeves v. State*, 339 Ark. 304, 5 S.W.3d 41 (1999); see also *Gilliland v. State*, 2014 Ark.

243 (per curiam) (holding that, to the extent that a claim is cognizable under Rule 37.1, section 16-90-111 has been superseded, and any allegation that can be considered under Rule 37.1 is subject to the limitations contained in the Rule).

For that reason, the trial court had authority to grant relief under the statute if the sentence imposed on appellant was indeed illegal. *Hodges v. State*, 2013 Ark. 299 (per curiam). Here, the sentence imposed on appellant did not exceed the statutory maximum.

The failure to appropriately indicate on the judgment-and-commitment order that appellant was 4 Cite as 2014 Ark. 539 sentenced as a habitual offender is clearly clerical error that does not result in an illegal sentence. See *Grissom v. State*, 2009 Ark. 557 (per curiam) (recognizing the failure to indicate habitual- offender status in the original judgment-and-commitment order was a “clerical oversight” when the transcript of the plea hearing showed that the appellant was informed that his sentence was being enhanced based on his status as a habitual offender).

With respect to clerical errors, this court has repeatedly recognized that clerical errors in judgments are subject to correction at any time. *Rayford v. Hobbs*, 2014 Ark. 244 (per curiam); *Misenheimer v. Hobbs*, 2012 Ark. 343 (per curiam); *Smith v. State*, 2011 Ark. 333 (per curiam) (“[A] circuit court has jurisdiction to amend a judgment and commitment order to correct a clerical error.”).

Moreover, clerical errors do not prevent enforcement of a judgment-and-commitment order. *Rayford*, 2014 Ark. 244; *Burgie v. Norris*, 2010 Ark. 267 (per curiam). Accordingly, we affirm the denial of the petition on the basis that the sentence of 96 months’ imprisonment imposed on appellant is not an illegal sentence.² However, we remand with instructions for the trial court to enter a corrected judgment-and-commitment order reflecting that appellant was sentenced as a habitual offender.

Affirmed and remanded with instructions. Matthew Esry, pro se appellant. Dustin McDaniel, Att’y Gen., by: Vada Berger, Ass’t Att’y Gen., for appellee. ² We can affirm if the right result is reached even if it is for a different reason. *Watkins v. State*, 2014 Ark. 283, 437 S.W.3d 685 (2014) (per curiam). ⁵